

# MINUTES

October

October 2<sup>nd</sup> – October 30<sup>th</sup>

Friday, October 2, 2009

Division One

**A124236 – In re D.M., a Person Coming Under the Juvenile Court Law. The People, v. D.M.**

Accordingly, the judgment is affirmed. Dondero, J., We Concur: Marchiano, P.J., Banke, J. (Not for Publication.)

Division Two

**A123994 – In re Z.C., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. Z.G.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Monday, October 5, 2009

Division Three

**A122890 – The People, v. Javon Allen.**

The judgment of conviction is affirmed. The matter is remanded for the trial court to set forth the statutory basis and amount of each fee, fine, penalty and assessment imposed and to amend the order of probation accordingly. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT, DIVISION FOUR

Monday, October 5, 2009

The court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J. and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Tom Lipsey, Bailiff.

A122354      Perry Morgan

v.

Sosa Granite and Marble, Inc.

Cause called. The presence of Reardon, J. has previously been waived by both parties. Alan Dell' Ario argued for appellant Sosa Granite. Edward McDonald argued for respondent Morgan. Submission of case deferred.

At this point, Sepulveda, J. joined the bench. Argument continued before Ruvolo, P.J., Sepulveda, J. and Rivera, J.

A122994      George Streeter

v.

Oakland Raiders

Cause called. David Reis argued for appellant Oakland Raiders. Hunter Pyle argued for respondent Streeter. Cause submitted.

*Court was adjourned at 10:11 a.m*

Tuesday, October 6, 2009

Division One

**A122857 – The People, v. Judy Pierce.**

By The Court: The Petition for rehearing is denied. Margulies, J. Acting P.J.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Tuesday, October 6, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Dondero, Justice, Banke, Justice, Fred Abad, Deputy Clerk, and CHP Officer Tom Lipsey, Bailiff.

A124052 Gloria Dodd,  
v.  
State of California Veterinary Medical Board.  
Cause called and argued by Hans Stucki, counsel for appellant, and Char Sachson, counsel for respondent. Cause ordered submitted.

A124213 Cox California Telecom,  
v.  
Global Naps California.  
Cause called and argued by Joel Davidow, counsel for appellant, and Allison Ehlert, counsel for respondent. Cause ordered submitted.

Justice Dondero left the bench and Justice Margulies joined the bench.

A123931 In re M.B.  
Alameda County Social Services Agency,  
v.  
T.G.  
Cause called and argued by Kathleen Morgan, counsel for appellant, and Grace Tam, counsel for respondent. Cause ordered submitted.

A123021 Estate of Gertrude C. Daley.  
Ronald Daley,  
v.  
Gregory O'Keeffe.  
Cause called and argued by Ronald Daley, appellant in propria persona, and Daniel Conrad, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Tuesday, October 6, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Dondero, Justice, Fred Abad, Deputy Clerk, and CHP Officer James Militar , Bailiff.

A122829 People,  
v.  
Charles B. Faultry.  
Cause called and argued by Jonathan Berger, counsel for appellant, and Bruce Ortega, counsel for respondent. Cause ordered submitted.

A124071 People,  
v.  
Raymon Narvaes.  
Cause called and argued by James Gee, counsel for appellant, and Masha Dabiza, counsel for respondent. Cause ordered submitted.

Court adjourned until Wednesday, October 7, 2009 at 9:00 AM.

Tuesday, October 6, 2009(Continued)

Division Two

**A124269 – The People, v. Renato Portillo.**

The judgment and sentence are both affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A123283 – The People, v. Vincent Scolari.**

The last sentence of condition number 1 shall be revised to read as follows: “You cannot frequent any location that you know, or that the probation officer informs you, are frequented by gang members.” Condition number 7 shall be revised to read as follows: “You cannot get any new tattoos, brands, burns, piercing, or voluntary scarring known to you to have gang significance or that the probation officer informs you have gang significance.” Except to the extent of these modifications to the conditions of probation imposed upon Scolari, the judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

**A125608 – Sang- Ick Chang et al., v. The Superior Court of San Mateo County, Alan Paolucci, R.P.I.**

This court will employ “the accelerated *Palma* procedure . . . only when petitioner’s entitlement to relief is so obvious that no useful purpose could reasonably be served by plenary consideration of the issue.” *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241.) Here, where the parties agree that the motion to strike should have been granted, the issuance of a peremptory writ is appropriate. Let a peremptory writ of mandate issue directing the superior court to vacate its June 23, 2009 order denying the motion to strike the claim for punitive damages and to issue a new order granting said motion without prejudice to real party’s right to bring a motion pursuant to section 425.13 for leave to file an amended complaint stating a claim for punitive damages. Petitioners shall recover their costs of this proceeding. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

**A120973 – Richard Vidor, v. City of Oakland Community and Economic Development Agency, Vulcan Properties, LLP, et al., R.P.I.**

The judgment denying the petition for writ of administrative mandate is affirmed. Jones, P.J., We Concur: Simons, J., Bruiniers, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, October 7, 2009

The Court convened at 9:00 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Dondero, Justice, Fred Abad, Deputy Clerk, and CHP Officer, Tom Lipsey, Bailiff.

A124325 In re Dennis B. Anderson on Habeas Corpus.  
Cause called and argued by Michael Sattris , counsel for petitioner, and Amanda Murray, counsel for real party in interest. Cause ordered submitted.

A122227 People,  
v.  
Ronald Nathaniel Hurtado.  
Cause called and argued by Jeffrey Glick, counsel for appellant, and Sara Turner, counsel for respondent. Cause ordered submitted.

A121130 Michael Berry, et al.,  
v.  
City of Antioch.  
Cause called and argued by Spencer Smith, counsel for appellants, and Gary Watt, counsel for respondent. Cause ordered submitted.

A119259 Maxine Willis Ussery, et al.,  
A122822 v.  
Helen McKinnely.  
Cause called and argued by Chaune Williams, counsel for appellants, and Robert Condie, counsel for respondent. Cause ordered submitted.

Panel Change: J. Marchiano left the bench, J. Banke joined the bench, and J. Margulies presided over the next case on calendar.

A123071 Linda Lowney,  
v.  
Elisabeth Bergsaker, et al.  
Cause called and argued by Brian Beckwith, counsel for appellant via teleconferencing, and Allonn Levy, counsel for respondents. Cause ordered



submitted.

Court Adjourned

Wednesday, October 7, 2009(Continued)

Division Three

**A124143 – The People, v. Douglas Gerard Brooks.**

**A126334 – In re Douglas Gerard Brooks, on Habeas Corpus.**

By The Court: At petitioner's request, the petition for a writ of habeas corpus, *In re Brooks*, A126334, is consolidated with the appeal in *People v. Brooks*, A124143. This court's consideration of the request for judicial notice and this court's determination of whether to issue an order to show cause will be deferred until the issues on the appeal have been considered. McGuiness, P.J.

Division Four

**A121567 – Paragon Real Estate Group of San Francisco, Inc. et al., v. Peter Hansen et al.**

The order sustaining Hansen's demurrer to Paragon's equitable indemnity cross complaint is reversed and vacated. The matter is remanded to the trial court for further proceedings in accordance with this opinion. Costs on appeal are awarded to Paragon. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

Division Five

**A119404 – The People, v. Ryan Brian Bui.**

The judgment is affirmed. Bruiniers, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

Thursday, October 8, 2009

Division One

**A119228 – The People, v. Aquior Alfonso Figueroa, Jr.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>1</sup> (Not for Publication.)

Thursday, October 8, 2009(Continued)

Division Three

**A124204 – Julia Keller McIntyre, v. San Francisco State University.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

**A122774 – The People, v. Sione Matangi Mahe.**

The judgment is affirmed.<sup>2</sup> Ruvalo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Friday, October 9, 2009

Division One

**A124375 – Mark Celsi, H & R Block et al.**

The order granting preliminary injunctive relief, including the ruling referenced therein with respect to the Arcata telephone number, is affirmed. Banke, J., We Concur: Margulies, Acting P.J., Dondero, J. (Not for Publication.)

Division Two

**A125055 – The People, v. Sergrey V. IL Yushin.**

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<sup>1</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>2</sup> Appellant's pending petition for habeas corpus will be denied by separate order.

The judgment is modified to show actual days served as 311 and total credits as 357. The trial court is directed to modify the abstract of judgment accordingly and to forward a copy of the amended abstract of judgment to the Department of Corrections. As modified, the judgment and sentence appealed from are affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A121651 – Iftikhar Nazir, v. United Airlines, Inc. et al.**

The summary judgment is reversed. As the first, third, fourth, fifth, sixth, seventh, ninth, and fourteenth causes of action present triable issues of material fact. The summary adjudications of the eight, twelfth, and thirteenth cause of action are affirmed, as are the fifth, sixth, and ninth causes of action as to Petersen. Plaintiff shall recover costs on appeal. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

Friday, October 9, 2009(Continued)

Division Three

**A124671 – The People, v. Matthew Michael Hilberg.**

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A121138, A121351 – Linda J. Arnold et al., v. Thomas G. Breza, individually and as Trustee, etc.**

The judgment is reversed as to the trial judge's determination that appellant trustee committed breaches of trust. The case is remanded to the trial court with directions to enter judgment in appellant's favor on the fourteenth, fifteenth, and sixteenth causes of action for breach of trust. The judgment is otherwise affirmed. Appellant is entitled to recover attorney fees incurred in successfully defending against respondents' causes of action, both in the trial court and on appeal. On remand, the court shall determine the amount of reasonable attorney fees expended by appellant in defense of the lawsuit. Appellant is entitled to recover from respondents his costs incurred on appeal upon timely application in the trial court. (Prob. Code, § 1002; Cal. Rules of Court, rule 8.278(c).) Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A124005 – The People, v. Mauricio Picado.**

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J.  
(Not for Publication.)

Tuesday, October 13, 2009

Division One

**A123021 – Estate of Gertrude C. Daley, Deceased. Ronald Daley, v. Gregory O’Keeffe, as Administrator, etc.**

The August 1, 2008, order authorizing payment of fees is affirmed. Banke, J.,  
We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Tuesday, October 13, 2009(Continued)

**A124151 – The People, v. Arthur J. Sowell.**

The judgment is affirmed. Marchiano, P.J., We Concur: Dondero, J., Banke, J.  
(Not for Publication.)

**A124325 – In re Dennis B. Anderson on Habeas Corpus.**

The writ of habeas corpus is granted to the extent that on or before 60 days from the issuance of the remittitur in this case, the Board of Parole Hearings is ordered to vacate its April 3, 2008 decision “In the matter of the Life Term Parole Consideration Hearing of: Dennis Anderson” and to hold a new parole consideration hearing in accordance with due process in light of *Lawrence, supra*, 44 Cal.4th 1181 and *Shaputis*, Anderson’s in prison conduct since the April 3, 2008 hearing. This opinion is final as to this court immediately. Marchiano, P.J., We Concur: Margulies, J., Dondero, J. (Not for Publication.)

Division Two

**A121536 – In re B.P., a Person Coming Under the Juvenile Court Law. The People, v. B.P.**

By The Court: It is ordered that the nonpublished opinion filed September 17, 2009, be modified as follows: (See Order.) The Disposition section on page 16 of the

opinion shall remain the same. There is no change in the judgment. Appellant's petition for rehearing is denied. Kline, P.J. (Not for Publication.)

**A123291 – In re Ramiro G., a Person Coming Under the Juvenile Court Law.  
The People, v. Ramiro G.**

The calculation of the maximum term of confinement is of no effect; the judgment is affirmed. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

**A118207 – The People, v. Gregory Colbert.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, October 13, 2009

The court convened at 9:35 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Ricky Franklin, Bailiff.

A124210     Nam Chung Cho  
              v.  
              Thornton, Taylor, Becker & Shinn  
Cause call. Each counsel confirmed her/his earlier waiver of Justice Sepulveda's presence on the bench. Laura Hess argued for appellants Cho et al. Phillip Shinn argued for respondent. Submission deferred until Justice Sepulveda has an opportunity to review the oral argument.

A123327     Steven Anthony Marlowe  
              v.  
              California Department of Motor Vehicles  
Cause called at 10:01 a.m. (cause was calendared for 9:30 a.m.) Peter Marlowe, was not present. (He eventually appeared at 10:39 a.m., after court adjourned.) David Pai, who did not request oral argument and is counsel for respondent Department, was present, but did not argue. Cause submitted.

The court recessed at 10:01 a.m.  
The court reconvened at 10:19 a.m.

A118043     Michael Hipp  
              v.  
              State Farm Mutual Automobile Insurance Company  
Cause called. In pro per appellant Michael Hipp argued. Mark G. Bonino argued for respondent. Cause submitted.

Court adjourned at 10:29 a.m.

Tuesday, October 13, 2009(Continued)

Division Five

**A123731 – The People, v. Mario A. Ruiz.**

The judgment is affirmed. Bruiniers, J., We Concur: Jones, P.J., Needham, J.  
(Not for Publication.)

**A123612 – In re Darrell A., a Person Coming Under the Juvenile Court Law.  
The People, v. Darrell A.**

The order is affirmed. Simons, Acting P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

**A124398 – In re Amaya M., a Person Coming Under the Juvenile Court Law.  
Contra Costa County Children & Family Services Bureau, v. Sergio M.**

The order is affirmed. Simons, Acting P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

**A124763 – Donald Smith, v. The Superior Court of The City and County of  
San Francisco, The People, R.P.I.**

The order to show cause, having served its purpose, is discharged, and the petition is granted. Let a peremptory writ of mandate issue directing respondent to vacate its order denying Smith's motion to dismiss in San Francisco Superior Court Case number 207788, entitled *People, v. Donald Smith et al.*, and enter a new and different order dismissing the information pending against Smith. To prevent any further delay of the proceedings below, this opinion shall be final as to this court within five (5) court days. (Cal. Rules of Court, rule 8.490(b)(3).) The previously issued stay shall dissolve on issuance of the remittitur. (Cal. Rules of Court, rule 8.490(c).) Bruiniers, J., We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

Wednesday, October 14, 2009

Division One

**A117254 – The People, v. Luther Peterson.**



Defendant's sentence is reversed, and the matter is remanded for resentencing consistent with this decision. The judgment of the trial court is otherwise affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>3</sup> (Not for Publication.)

Wednesday, October 14, 2009(Continued)

**A122385, A123924 – Michael E. McLaughlin et al., v. Granite Excavation & Demolition, Inc., et al.**

The orders of the trial court are affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>4</sup> (Not for Publication.)

**A124213 – Cox California Telecom, LLC, Global Naps California, Inc.**

The judgment is reversed, and the case remanded to the trial court with directions to dismiss the action with prejudice. Banke, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

Division Two

**A119345, A121027 – Leonard Whiteley et al., v. R.J. Reynolds Tobacco Company et al.**

The judgment is affirmed. Plaintiffs shall recover their costs on this appeal. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A122733 – Greg Levy, v. Zhenwen Liang.**

By The Court: It is ordered that the opinion filed herein on September 15, 2009, be modified as follows: (See Order.) Appellant's Petition for rehearing, filed September 30, 2009, is denied. There is no change in the judgment. McGuiness, P.J. Not for Publication.)

**A119297 – The People, v. Christopher Matthew Coleman.**

The restitution order is vacated and the matter is remanded for the limited purpose of requiring the trial court to determine whether the \$15,000 valuation of the victim's business awarded, if necessary, to assure that those debts and costs are not

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<sup>3</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>4</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

twice included in the award of restitution. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Division Four

**A123267 – Sharon D. Gocke, as Trustee, etc., v. Michelle Perkins et al.**

The judgment is affirmed. Costs on appeal to respondents. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Wednesday, October 14, 2009(Continued)

**A123354 – The People, v. Tommy Lee Boggs.**

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A121899 – Citizens for Civic Accountability, v. Town of Danville, Davidon Homes, R.P.I.**

The judgment is reversed and remanded with directions to the trial court to: (1) enter a judgment granting the writ of mandate petition, and (2) issue a peremptory writ of mandate directing Town to (a) set aside its certification of the MND for the Project and (b) prepare an EIR in compliance with CEQA in accordance with the views expressed herein. Citizens is entitled to costs on appeal. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A117181, A117207 – Estate of Richard H. Kloor, Deceased. Jonathan Kloor et al., v. Lesli Kloor, individually and as Executor, etc. Jonathan Kloor et al., v. Lesli Kloor, individually and as Trustee, etc., et al.**

By The Court: The petition for rehearing is denied. Jones, P.J.

**A122406 – Harold Steinmetz, v. Hope Goldman.**

By The Court: The petition for rehearing is denied. Jones, P.J.

**A124275 – The People, v. Richard Morales, Jr.**

The order denying Morales's motion to terminate mandatory sex offender registration is reversed. The case is remanded to the trial court for the purpose of holding a hearing on the issue of discretionary sex offender registration, consistent with

the views expressed in this opinion. Needham, J., We Concur: Simons, Acting P.J., Bruiniers, J. (Not for Publication.)

Thursday, October 15, 2009

Division One

**A120397 and A122294 – Commonwealth Land Title Company, v. Giovanni Zocca, Raffaele S. Zocca et al. Raffaele Zocca et al., v. Giovanni Zocca. Giovanni Zocca, v. Raffaele S. Zocca et al.**

Thursday, October 15, 2009(Continued)

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>5</sup> (Not for Publication.)

Division Four

**A122307 – A.M., v. Albertsons, LLC.**

By The Court: The requests for publication of this court's September 18, 2009 opinion are granted and it hereby ordered that said opinion, with the exception of part III. B., be published in the Official Reports. Ruvolo, P.J. (Certified for Publication.)

Friday, October 16, 2009

Division Four

**A125815 – Julie J., v. The Superior Court of Alameda County, Alameda County Social Services Agency, R.P.I.**

Our decision is final immediately, in the interests of justice. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

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<sup>5</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A124705 – In re Robin R., a Minor. P.R., v. Robert B.**

The appeal is dismissed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J.  
(Not for Publication.)

**A122994 – George Streeter, v. Oakland Raiders et al.**

The order denying appellants' petition to compel arbitration is affirmed.  
Respondent shall recover his costs on appeal. Sepulveda, J., We Concur: Ruvolo, P.J.,  
Rivera, J. (Not for Publication.)

Division Five

**A125971 – K.J., v. The Superior Court of Contra Costa County, Contra  
Costa County Children and Family Services Bureau, R.P.I.**

The petition for an extraordinary writ is denied on the merits. (See Cal. Const.,  
art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Mother is barred in any  
subsequent appeal from making further challenges to orders terminating reunification  
services and setting a hearing under section 366.26,

Friday, October 16, 2009(Continued)

subd. (1).) Because the section 366.26 hearing is set for November 25, 2009, and in the  
interests of justice, our decision is final as to this court immediately. Jones, P.J., We  
Concur: Simons, J., Needham, J. (Not for Publication.)

Monday, October 19, 2009

Division Two

**A124877 – The People, v. James R. Pagan.**

Our independent review having found no arguable issues that require briefing,  
the judgment of conviction and sentence are affirmed. Kline, P.J., We Concur: Haerle,  
J., Lambden, J. (Not for Publication.)

**A124701 – In re Luis C., a Person Coming Under the Juvenile Court Law.  
The People, v. Luis C.**

The judgment sustaining the petition and sentence imposed are affirmed. Kline,  
P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Monday, October 19, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Singh and I. Santos, Deputy Clerk.

- A105981     John T. Kendall, as Trustee in Bankruptcy, etc.,  
              v.  
              Paul C. Walker.  
Cause called and argued by Lewis Soffer, counsel for appellant, and David R. Fischer, counsel for respondent. Cause ordered submitted.
- A124481     Arlene Bell-Sparrow,  
              v.  
              Farmers Insurance Company.  
Cause called and argued by Arlene Bell-Sparrow, in propria persona, and Don Willenbirg, counsel for respondent. Cause ordered submitted.

**Court Adjourned.**

Monday, October 19, 2009(Continued)

Division Three

**A125577 – Adelaide Kircher et al., v. The Superior Court of Marin County, Bonnie Kircher, R.P.I.**

The stay previously issued shall be lifted automatically upon entry of the trial court's new order, in accordance with this decision. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

Division Four

**A123704 – John Durrant et al., v. Nicole Castaneda.**

With respect to all provisions in the trial court's December 8 order except the portion denying Castaneda's motion for the return of the levied funds, the appeal is DISMISSED. With respect to Castaneda's motion for the return of the levied funds, the December 8 order is AFFIRMED. Castaneda's motion to take judicial notice is DENIED. The Durrants shall recover their costs on appeal. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A124778 – In re William H., a Person Coming Under the Juvenile Court Law. The People, v. William H.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Tuesday, October 20, 2009

Division Two

**A125396 – In re M.H., a Person Coming Under the Juvenile Court Law. Michael H., v. The Superior Court of Alameda County, Alameda County Social Services Agency et al., R.P.I.**

The petition is denied. Our decision is final as to this court immediately. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, October 20, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Singh and S. Wheeler, Deputy Clerk.

A122442/ Stoneridge Homeowners Association,  
A122436 v.  
Saddleback Homeowners, et al.  
Cause called and argued by Kurt Hendersholt, counsel for appellant, and Paul V. Esposito, counsel for respondents. Cause ordered submitted.

A120327 The People,  
v.  
Erdenechuluun Batochir.  
Cause called and argued by Alexander Paul Green, counsel for appellant, and Lisa Ashley Ott, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A122152/ Santinder Garcha et al.,  
A123850 v.  
Central Plaza-Union City et al.  
Cause called and argued by Merrill Glen Emerick, counsel for appellants, and Gretchen Estelle Wettig and Karen Michelle Berntson, counsel for respondents. Cause ordered submitted.

**Court in recess until 1:30 p.m.**

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, October 20, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Singh and S. Wheeler, Deputy Clerk.

At this point of the proceedings, Presiding Justice Kline announces that the panel in the first case consists of himself, J. Haerle, and J. Richman, and the panel for the remaining cases on calendar consists of himself, J. Haerle and J. Lambden.

A122671 Richard Beil et al.,  
v.  
Steve Marlowe.  
Cause called and argued by David Carico, counsel for appellant, and Paul Wilfred Windust, counsel for respondents. Cause ordered submitted.

A124066 CA-The Lakes Limited Partnership,  
v.  
Brabetz, Inc.  
Cause called and argued by Kathleen Anne Knotts, via teleconference, counsel for appellant, and Joseph Henry Schieffer, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Richman left the bench and Justice Lambden joined the bench for the remainder of the calendar.

A123458 Hua Cao Xu et al.,  
v.  
Jerome J. Ghigliotti.  
Cause called and argued by Daniel W. Hager, counsel for appellant, and Jethro Busch, counsel for respondents. Cause ordered submitted.

A121398 Gateway Bank,



v.

Ticor Title Company of California et al.

Cause called and argued by Barry Hovis, counsel for appellant, and Darius C. Ogloza, counsel for respondent Ticor Title Company of California, and Richard Glen Carlston, counsel for respondent Chicago Title Insurance Company. Cause ordered submitted.

A123739

Denise Musu-Hawa Hoffman,

v.

Zakaria M. Shahin;

San Francisco Department of Child Support Services.

Cause called and argued by Zakaria M. Shahin, appellant appearing propria persona, and Sharon Quinn, Deputy Attorney General, via teleconference, counsel for intervener and respondent. Cause ordered submitted.

**COURT ADJOURNED.**

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, October 20, 2009

Court convened at 9:30 a.m. at 2425 Jefferson Street, Napa, California.  
Present: McGuiness, P.J., Pollak, J., Siggins, J. and Jenkins, J.; and B.  
Robbins, Deputy Clerk.

The panel on the first case consisted of McGuiness, P.J., Siggins, J., and  
Jenkins, J. Pollak, J. did not participate in argument of the first case.

A122382 The People,  
v.  
Jason McCord Patten.  
Cause called and argued by Paul R. Kleven, counsel for appellant, and Bruce  
Ortega, counsel for respondent. Cause ordered submitted.

The panel of the second case consisted of McGuiness, P.J., Pollak, J., and  
Jenkins, J. Siggins, J. did not participate in argument of the second case.

A122686 The People,  
v.  
Timothy Thomas Rauen.  
Cause called and argued by Paul R. Kleven, counsel for appellant, and Bruce  
Ortega, counsel for respondent. Cause ordered submitted.

Following submission of the last case, the court and counsel participated in a  
general question-and-answer session with the high school students present in  
the audience.

Court adjourned.

Tuesday, October 20, 2009(Continued)

Division Five

**A123668 – Vivian Tran, v. Hoa Thi Pham.**

The order denying appellant's TRO petition and awarding attorney fees to respondent is affirmed. Respondent is to recover her costs on appeal. Jones, P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

**A121128 – Miller Avenue Professional and Promotional Services, Inc., v. Charles A. Koss et al.**

By The Court: It is ordered that the opinion filed herein on September 25, 2009 be modified as follows: (See Order.) The petition for rehearing is denied. Jones, P.J. (Not for Publication.)

**A121591 – Carl Lippenberger et al., v. Canal Properties et al.**

The judgment is affirmed. Wiecks shall pay Lippenberger's costs on appeal. Bruiniers, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, October 22, 2009

Division One

**A122516 – 10 Box Z, LLC, v. Heritage Sotheby's International Realty et al.**

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>6</sup> (Not for Publication.)

**A121098 – The People, v. Carlos Ramirez.**

The judgment is affirmed.<sup>7</sup> Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>8</sup> (Not for Publication.)

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<sup>6</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>7</sup> In a separate petition for writ of habeas corpus (case No. A125244), Ramirez makes a number of claims concerning trial counsel's alleged inadequate performance. We have summarily denied the petition by separate order filed this date.

<sup>8</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A124551 – The People, v. Carlos Preciado.**

The judgment is affirmed. Banke, J., We Concur: Marchiano, P.J., Margulies, J.  
(Not for Publication.)

Thursday, October 22, 2009(Continued)

Division Two

**A122626 – Wells Fargo Bank et al., v. James Neilsen.**

The judgment is affirmed. Haerle, Acting P.J., We Concur: Lambden, J.,  
Richman, J. (Certified for Publication.)

Division Three

**A122742 – The People, v. Anthony Joseph Morin.**

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J.  
(Not for Publication.)

**A123979 – The People, v. James Edwin Bell.**

The trial court's order is vacated to the extent it authorizes the administration of antipsychotic medication to Bell involuntarily, and the matter is remanded to the trial court for findings that comply with Penal Code section 1370, subdivision (a)(2)(B) and satisfy the constitutional constraints governing the forcible administration of medication to a criminal defendant. The order of commitment is otherwise affirmed. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

Division Four

**A122796 – The People, v. Raul Avalos.**

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J.  
(Not for Publication.)

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Thursday, October 22, 2009

Court convened at 9:00 a.m. at Deer Valley High School, 4700 Lone Tree Way, Antioch, California 94531. Present: Jones, P.J., Simons, J., Needham, Jr., J., Bruiniers, J., and Joshua Chow, Deputy Clerk.

A12140    The People,  
9            v.  
             Jeffrey Tabron,  
             Cause called and argued by Kathryn Seligman, counsel for appellant, and by Ronald Niver, counsel for respondent. Cause ordered submitted.

A12050    The People,  
8            v.  
             K.M.,  
             Cause called and argued by Daniel Byrne, counsel for appellant, and by Robert Niver, counsel for respondent. Cause ordered submitted.

Court adjourned at 10:12 a.m.

Friday, October 23, 2009

Division One

**A123805 – In re V.A. et al., Persons Coming Under the Juvenile Court Law.  
Solano County Department of Health and Social Services, v. R.A.**

The order terminating reunification services to Father pursuant to section 366.21, subdivisions (e) and (g)(1) is affirmed. Banke, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122489 – Warren C. Havens et al., v. Mobex Network Services et al.**

By The Court: The petition for rehearing and request for stay are denied. Marchiano, P.J.

Division Five

**A123663 – In re A.B., a Person Coming Under the Juvenile Court Law.  
Alameda County Social Services Agency, v. C.N.**

The appeal is dismissed as moot. Needham, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Friday, October 23, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Bruiniers, J., and Joshua Chow, Deputy Clerk.

A115453 Frank Lembi et al.,  
A116342 v.  
A117583 Marie Brandstetter,  
Peter Lippett et al.,  
Consolidated causes called and argued by Bradley M. Kass, counsel for appellant, and by Herbert W. Yanowitz, counsel for respondents. Cause ordered submitted.

A122909 The People,  
v.  
Sven Fjeld-Erichsen,  
Cause called and argued by Rudolph G. Kraft, counsel for appellant, and by Bridget Billeter, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Bruiniers entered.

A122650 The People,  
v.  
Carlton Paul Clay,  
Cause called and argued by William Locke, counsel for appellant, and by Brent W. Wilner, counsel for respondent. Cause ordered submitted.

A122567 Union Pacific Railroad Company,  
v.  
City of American Canyon et al.,  
Lake Street Venture, LLC,  
Cause called and argued by Edgar B Washburn, counsel for appellant, and by William D. Ross and Arthur J. Friedman, counsels for respondents. Cause ordered submitted.

A123721 Robert Wright,  
v.  
Santa Rosa Memorial Hospital,  
Cause called and argued by Myron Moskovitz, counsel for appellant, and by Carolyn Oill, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Needham left the bench and Justice Simons entered.

A121520 The People,  
v.  
Joseph Davis, Jr.,  
Cause called and argued by Mark A. McBride, counsel for appellant, and by Allan Yannow,  
counsel for respondent. Cause ordered submitted.

A123745 Eugene Schneider,  
v.  
Juanita Elliott,  
Cause called and argued by Eugene Schneider, appellant, and by Larry E. Lulofs, counsel  
for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Needham entered.

A121271 Hana Hilsenrath et al,  
A121978 v.  
Nixon Peabody LLP et al.,  
Consolidated causes called and argued by Hana Hilsenrath and Oliver Hilsenrath,  
appellants, and by Edward F. Donohue and Christopher Nolan, counsels for respondents.  
Cause ordered submitted.

A121347 Shelly Parks,  
v.  
James Parks,  
Cause called and argued by Jonathan D. Gordon, counsel for appellant, and by Dan G.  
Ryan, counsel for respondent. Cause ordered submitted.

Court adjourned at 12:09 p.m.



Monday, October 26, 2009

Division Two

**A123618 – In re Anthony Allen, on Habeas Corpus.**

The Board's decision is reversed. The matter is remanded to the Board for reconsideration in light of *Lawrence, Shaputis*, and this decision, within 60 days of the finality of this decision. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

Division Four

**A122398 – In re Reyes M., a Person Coming Under the Juvenile Court Law.  
The People, v. Reyes M.**

The order is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A125398 – In re Devon W., a Person Coming Under the Juvenile Court Law.  
The People, v. Devon W.**

The restitution order is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A123912 – Richard L. Miller, v. Bernard Wolf.**

The judgment is affirmed. Respondent's motion for sanctions is denied. Respondent shall recover his costs on appeal. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A124767 – The People, v. Julius Johnson.**

The judgment is affirmed. Simons, Acting P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

**A124206 – The People, v. Samuelo Buelna.**

The judgment is vacated. The case is remanded for resentencing following the preparation of a supplemental probation report. Bruiniers, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A123156 – Todd Beth et al., v. Everett C. Doughty III.**

Plaintiffs are entitled to costs on appeal. Simons, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

Tuesday, October 27, 2009

Division One

**A123931 – In re M.B., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. T.G.**

The six-month findings and orders are affirmed. Marchiano, P.J., We Concur: Margulies, J., Banke, J. (Not for Publication.)

**A114529 – In re S.H., a Person Coming Under the Juvenile Court Law. The People, v. S.H.**

The judgment is affirmed. Banke, J., We Concur: Margulies, Acting P.J., Dondero, J. (Not for Publication.)

**A124216 – The People, v. Jeanette Lynn Thomas.**

As modified, we affirm the commitment order. Banke, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122038 – John Mahoney et al., v. Georgia-Pacific, LLC.**

The judgment is affirmed.<sup>9</sup> Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>10</sup> (Not for Publication.)

Division Two

**A124073 – The People, v. Gumersindo Cervantes.**

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

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<sup>9</sup> Plaintiffs' and GP's requests for judicial notice are denied.

<sup>10</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A123124 – The People, v. Charles Cleveland Porter.**

The recommitment order is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A123063 – The People, v. Donald Paul Lawson.**

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Tuesday, October 27, 2009(Continued)

Division Three

**A122686 – The People, v. Timothy Thomas Rauen.**

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

**A124093 – The People, v. Kenyon Ray Graham.**

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A124231 – The People, v. Jorge Alberto Cruz.**

The order modifying probation is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

**A122798 – In re S.B., a Person Coming Under the Juvenile Court Law. The People, v. S.B.**

The judgment is affirmed.<sup>11</sup> Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

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<sup>11</sup> As the pretrial identification is not constitutionally infirm, the in-court identification could not have been tainted and is not subject to challenge. (*People v. Hernandez* (1970) 11 Cal.App3d 481, 488.)

**A124718 – The People, v. Luis Alberto Abonce-Munoz.**

Judgment affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, October 27, 2009

The Court convened at 9:00 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P. J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Tom Lipsey, Bailiff.

A123011      Baccarat Fremont  
                 v.  
                 Alameda County Flood Control & Water Conservation District  
Cause called. Bob Moore argued for appellant Baccarat Fremont. Eric Blumhardt and Henry Hewitt argued for respondents. Cause submitted.

A123742      Anthony M. Ferras  
                 v.  
                 Morrison Homes, Inc.  
Cause called. In pro per appellant Ferras argued. Mary Acquesta argued for respondent. Cause submitted.

A125289      Lois Farrell  
                 v.  
                 Donald R. Farrell, as Trustee, etc.  
Cause called. R. A. Canatella argued for appellant Trustee. Michele McGill argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P. J., Reardon, J., and Rivera, J.

A121349      Miguel Suarez et al.  
                 v.  
                 Pacific Northstar Mechanical  
Cause called. Bradley M. Corsiglia argued for appellants Suarez et al.. Jeffry A. Miller argued for respondent. Cause submitted.

A122121      People  
                 v.  
                 Dan Ernest Lagomarsino  
Cause called. Katharine Demgen teleargued for appellant Lagomarsino. Allan

Yannow argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P. J., Sepulveda, J. and Rivera, J.

A123352      In re M. S., a minor.  
Alameda County Social Services Agency  
v.  
M. S.  
Cause called. Nicolas C. Vaca argued for appellants M. S. Calvin James argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P. J., Reardon, J., and Rivera, J.

A121679      Miguel Vivas  
v.  
Regent of U. C. et al.  
Cause called. Mayo Makarczyk argued for appellant Vivas. Sonja M. Dahl argued for respondents. Cause submitted.

A1216118      City of Santa Rosa  
v.  
Ramen Patel et al.  
Cause called. Marshall E. Bluestone argued for appellants Patel et al. Frank Weiser teleargued for respondent. Cause submitted.

Court recessed at 11:46 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, October 27, 2009

The Court reconvened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J., Sepulveda., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer James Militar, Bailiff.

A122460     Mary Wika  
              v.  
              City of Benicia, Dirk Fulton, et al

Cause called William Kopper appeared by telephone and argued for appellant Wika. David de Jesus argued for respondents City of Benicia, et al. Cause submitted.

A114813     A.F. Evans Company, Inc., et al,  
              v.  
              Doheny-Vidovich Partners, et al  
Cause called. Robert Knox argued for appellants A.F. Evans Company, et al. Reed E. Harvey also appeared for appellants, but did not argue. Douglas A. Applegate argued for respondents Doheny-Vidovich, et al. Cause submitted.

*The court adjourned at 2:31 p.m.*

Tuesday, October 27, 2009(Continued)

Division Five

**A121279 – The People, v. Kevin Lee Johnston.**

The sentence in this case is reversed and the cause is remanded for redetermination of the prior strike conviction allegation and for resentencing. In all other respects, the judgment is affirmed.

Wednesday, October 28, 2009

Division One

**A124071 – The People, v. Raymon Narvaes.**

The orders are affirmed. Dondero, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A119259 – Maxine Willis Ussery, as Cotrustee, etc., et al., Warner Willis, as Cotrustee, etc., v. Shirley Ann Ford, as Cotrustee, etc., et al.**

**A122822 – Warner Willis, as Cotrustee, etc., et al., v. Maxine Willis Ussery, as Cotrustee, etc., et al.**

The orders are affirmed. Dondero, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A123071 – Estate of Thor A. Tollefsen, Deceased. Linda N. Lowney, v. Elisabeth Bergsaker et al.**

The judgment is affirmed. Dondero, J., We Concur: Margulies, Acting P.J., Banke, J. (Not for Publication.)

Division Two

**A121522 – The People, v. David Darrell Sanders.**

The matter is remanded for resentencing in accordance with the views expressed in this opinion (see pts. IV and V, *ante*). In all other respects, the judgment is affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)



**A123546 – Julian Attree, v. Jimex, Inc., et al.**

The order granting defendants' special motion to strike is reversed and the case remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to appellant. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, October 28, 2009(Continued)

Division Three

**A123427 – The People, v. Eric Daton Derouen.**

The appeal is dismissed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, October 28, 2009

Court convened at 9:10 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J. and Jenkins, J.; and F. Castuera, Deputy Clerk.

A123882 Robert K. Leung,  
v.  
City and County of San Francisco.  
Cause called and argued by Orestes Cross, counsel for appellant, and Stacey Lucas, counsel for respondent. Cause ordered submitted.

A121526 Christopher Yanke,  
v.  
City of Oakland et al.  
Cause called and argued by Larry Peterson, counsel for appellant, and Caryl Casden, counsel for respondent. Cause ordered submitted.

A120469 John Hsu,  
v.  
California Department of Personnel Administration.  
Cause called and argued by appellant John Hsu, appearing in pro per, and Ronald Pearson and Karen Donald, counsel for respondent. Cause ordered submitted.

A122694 City of Berkeley,  
v.  
U-Haul Company of California et al.  
Cause called and argued by Jim Bauch, counsel for appellant, and Lynne Bourgault, counsel for respondent. Cause ordered submitted.

A122680 At this point in the proceedings, McGuiness, P.J., left the bench and Siggins, J. joined the bench. Pollak, J. presided over the remainder of the morning session.

Rita Kinnick,

v.

Saratoga Capital Inc.

Cause called and argued by appellant Rita Kinnick, appearing in pro per, and Benjamin Johnson, counsel for respondent. Cause ordered submitted.

A123765 Continued

Tracy Frey,

v.

City of East Palo Alto Police.

Cause called and argued by Alison Berry-Wilkinson for appellant, and Paul Coble, counsel for respondent. Both counsel appeared via teleconference call.

A123270 Cause ordered submitted.

Dawna Joseph et al.,

v.

Albert Caesar et al.

Cause called and argued by Arnold Berschler, counsel for appellant, and Lawrence Baker, counsel for respondent. Cause ordered submitted.

Continued (Afternoon Session)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, October 28, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Siggins, J. and Jenkins, J.; and B. Robbins, Deputy Clerk.

A122964 In re Bruce A. Cerny

A124744 On Habeas Corpus.

Cause called and argued by Benjamin Ramos, counsel for petitioner, and Denise Yates, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Jenkins left the bench and Justice Pollak joined the bench.

Kory Lawrence Patterson,

v.

California Department of Motor Vehicles.

Cause called and argued by Paul Burglin, counsel for appellant, and William McMahon, counsel for respondent. Cause ordered submitted.

A124094 Estate of Christina Rya.

Tangie Terrell,

v.

Dillingham & Murphy, et al.

Cause called and argued by Timothy J. Halloran, counsel for appellants, and Sam Walker, counsel for respondent. Cause ordered submitted.

Court adjourned.

Thursday, October 29, 2009

Division Two

**A120420 – The People, v. Eric Vernon Parker.**

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

**A124066 – CA-The Lakes Limited Partnership, v. Brabetz. Inc.**

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

**A123742 – Anthony M. Ferras, v. Morrison Homes, Inc.**

Because appellant accepted the benefit of the settlement, he is precluded from appealing the order preserving the settlement and accordingly we dismiss the appeal. Appellant to pay costs. The motions for sanctions are denied. Appellant's requests for judicial notice are denied. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A124644 – The People, v. Tyson Robinson.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

**A121607 – Debbie Ramirez et al., v. California Highway Patrol et al.**

By The Court: Since this court's September 30, 2009 does not meet the standard for publication as set forth in rule 8.1105(c) of the California Rules of Court, the request for publication is denied. Pursuant to rule 8.1120(b) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Jones, P.J.

**A123811 – The People, v. Kenneth Jim Hankins.**

The judgment is modified by striking the section 1202.4 restitution fine in the amount of \$600 and the section 1202.45 parole revocation fine is reduced to \$220. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the California Department of Corrections and Rehabilitation. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Thursday, October 29, 2009(Continued)

**A123654 – The People, v. Raywood Mitchell.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

Friday, October 30, 2009

Division Two

**A124910 – The People, v. Sandra L. Cavanas.**

Our independent review having revealed no arguable issues that require further briefing, the judgment of conviction and sentence are affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A124172 – In re E.Y., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. J.L.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A122144 – The People, v. Deandre Austin.**

The convictions on counts seven and nine are vacated. The judgment of conviction is affirmed in all other respects. The clerk of the trial court is directed to prepare and amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A122987 – In re Gerardo M., a Person Coming Under the Juvenile Court Law. The People, v. Gerardo M.**

The juvenile Court's disposition is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A122382 – The People, v. Jason McCord Patten.**

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A120469 – John Hsu, v. California Department of Personnel Administration, California Department of Toxic Substances Control, R.P.I.**

Friday, October 30, 2009(Continued)

The orders of May 11, 2007, November 16, 2007, December 28, 2007, and January 2, 2008, are affirmed. Respondents are awarded costs on this appeal. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

**A125704 – M.T., v. The Superior Court of San Francisco County, San Francisco Department of Human Services et al., R.P.I.**

The petition for an extraordinary writ is denied on the merits. The temporary stay of the section 366.26 hearing is dissolved and the decision is final in this court immediately. (See Cal. Rules of Court, rule 8.490(b)(3).) McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Certified for Publication.)

**A124652 – Kory Lawrence Erland Patterson, v. California State Department of Motor Vehicles.**

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J., (Not for Publication.)

Division Four

**A120471 – Gary Alexander et al., v. David J. Cook et al.**

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A121679 – Miguel Vivas et al., v. The Regents of the University of California.**

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A121923 – The People, v. Robert Reeves Blakewood.**

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A122523 – The People, v. Amani V. Bolden.**

The judgment is modified to reflect that defendant is entitled to presentence credit for 766 actual days and 382 conduct days for total presentence credits of 1,148 days. The trial court is directed to prepare and amended abstract of judgment and to forward a copy to California's Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A121150 – The People, v. Charles L. Christman.**

The order appealed from is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Friday, October 30, 2009(Continued)

**A122698 – The People, v. Siaad Hamaudi Baltrip.**

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A122460 – Mary Wika, v. City of Benicia, Dirk Fulton et al., R.P.I**

The judgment is reversed and the matter remanded to the trial court with directions to issue a writ of mandate requiring the City to rescind its issuance of building permits within 120 days (or another reasonable period of time determined by the trial court) if the City Planning Commission does not find, upon application by the developer or current owner, that the currently configured shopping center qualifies for a use permit under Benicia Municipal Code section 17.74.040. Appellant Wika Shall recover costs incurred on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 8.278.) Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A123903 – The People, v. Joseph Guiseppe Cutrufelli.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)



**A122563 – Lake Almanor Associates L.P., v. Huffman-Broadway Group, Inc.**

The judgment is affirmed. Costs on appeal are awarded to respondent. Simons, Acting P.J., We Concur: Needham, J., Bruiniers, J. (Certified for Publication.)

**A122242 – Stephen Wollmer et al., v. City of Berkeley et al., 1950 MLK, LLC, R.P.I.**

The judgment is affirmed. Bruiniers, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A119404 – The People, v. Ryan Brian Bui.**

By The Court: The petition for rehearing is denied. Jones, P.J.

**A125650 – In re J.J., a Person Coming Under the Juvenile Court Law. Contra Costa County Children & Family Services Bureau, v. A.G.**

By The Court: Appellant A.G.'s attorney filed a letter with this court on September 23, 2009, indicating there are no arguable issues. Appellant A. G. had failed to respond to our letter of August 25, 2008 giving her the opportunity to state any issues she feels should be reviewed on appeal. Therefore the appeal is dismissed. (In re Sade C. (1996) 13 Cal.4th 952, 994.) Jones, P.J.

Friday, October 30, 2009(Continued)

**A123877 – In re Adrian R. et al., Persons Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. Kassandra R.**

The juvenile court's December 2008 dispositional order is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

**A122909 – The People, v. Sven Fjeld-Erichsen.**

The order committing appellant to the State Department of Mental Health is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

**A121271, A121978 – Hana Hilsenrath et al., v. Nixon Peabody LLP, et al.**

The orders are affirmed. Needham, J., We Concur: Simons, Acting P.J., Bruiniers, J. (Not for Publication.)

**A122650 – The People, v. Carlton Paul Clay.**

The order is affirmed. Needham, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)